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Bastard - Duty to Support - Effectiveness of Uniform Reciprocal Enforcement of Support Act

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move is being made to solve the problem. It is difficult to determine the effect that just compensation would have on the principles surrounding the legal profession and the pride developed by the individual lawyer. It does not seem possible, however, that it would have an adverse effect on principles and pride if nominal compensation did not. It would seem that the attorney would work harder to build up individual pride if he would not have to worry about adequate compensation. It may even strengthen his principles in that he would not attempt to get out of an appointment or advise a client in such a way so as to end the trial quickly.

The very fact that state statutes and the Criminal Justice Act of 1964 provide for compensation indicates that it is necessary. The judge in the present case admitted that he selected an attorney and firm which had the means to stand the burden. This being the case, the writer can conceive of no reason why it should not be just compensation rather than a nominal sum.

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BASTARD—DUTY TO SUPPORT—EFFECTIVENESS OF UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT—Plaintiff obtained a judgement in Kentucky under which defendant was adjudged the father of plaintiff's illegitimate child and ordered to contribute to the child's support. Plaintiff then brought an action in Texas under the Uniform Reciprocal Enforcement of Support Act to secure enforcement of the Kentucky judgment. In refusing to enforce the judgement, the Texas Court of Civil Appeals, with one justice dissenting,[1] *held* that section 7 of the Uniform Support Act,[2] granting to plaintiff the election of state law to be applied, was repugnant to the fourteenth amendment of the U. S. Constitution and that article five of the U. S. Constitution was inapplicable because of the ambulatory nature of the Kentucky judgment. *Bjorgos v. Bjorgos*, 391 S.W.2d 528 (Tex. 1965).

Although a majority[3] of jurisdictions concur with the Texas court regarding the obligations under the full faith and credit clause, the trend is toward upholding ambulatory judgments of sister

13. Posey & Tompkins v. Mobile County, 50 Ala. 6 (1873). "If counsel wilfully refuse to discharge this duty, on a proper order of the court, they should be removed or suspended." The plan adopted by the United States District Court, District of North Dakota, *supra* note 2, states that: "The adoption of this plan shall not affect the obligation of attorneys admitted to the Bar of this Court to accept appointment to serve as counsel without compensation for indigent defendants in criminal cases, in habeas corpus actions, and in proceedings under 18 U.S.C. § 2255."

1. The dissent favored enforcement, basing his decision on the Texas Supreme Court's application of full faith and credit in Guercia v. Guercia, 150 Tex. 418, 241 S.W.2d 297 (1951).
2. TEX. REV. CIV. STAT. art. 2328b-3 § 7 (1964).
3. *E.g.*, Ogden v. Ogden, 33 So. 2d 870 (Fla. 1947); Newell v. Newell, 77 Idaho 355, 293 P.2d 663 (1956); Latham v. Latham, 223 Miss. 263, 78 So. 2d 147 (1955).

states.[4] The rationale for upholding such judgments is that the full faith and credit requirement sets minimum standards above which the states may extend their recognition, or that of comity and public policy.[5] Notably there are decisions by Texas courts which, although distinguishable from the principal case, have upheld ambulatory judgments on the basis of article five.[6]

The court's refusal in the instant case to enforce the judgment on the basis of the fourteenth amendment is grounded on the fact that Texas has not altered the common law rule as to duty of support of illegitimate children.[7] Therefore to place on defendant, a Texas citizen, an obligation imposed under the laws of another state, but not imposable under Texas law, would contravene the equal protection clause.

In a majority of states the common law rule has been displaced by legislation specifically stating that illegitimate children must be supported.[8] The common law rule has been changed in some states by such judicial action as: rejecting the common law concept of the bastard, "the child of no one," as being contrary to public policy;[9] looking to other parts of the state law to determine the meaning of broad language in the support statute;[10] and interpreting the broad language of the support statute to include illegitimate children.[11]

The need to develop an expeditious and economic means of placing the burden of support on those who are legally obligated to provide support has become more acute with the greatly increased mobility of our populus in the last half century. The Uniform Reciprocal Enforcement of Support Act was proposed as an answer to the problem. The rapid adoption of the act by all of the states evinced the broad recognition of the problem and the desire for a solution.[12]

The Act endeavors to provide a two-state action which eliminates the need for one seeking support to pursue the itinerant provider, and replaces it with an economical and expeditious means of enforcing a support judgment.[13] Because the original act was construed to necessitate an action in each state to ascertain the duty

4. *E.g.*, Worthley v. Worthley, 44 Cal. 2d 465, 283 P.2d 19 (1955); Ostrander v. Ostrander, 190 Minn. 547, 252 N.W. 449 (1934); Johnson v. Johnson, 8 S.E.2d 351 (S.C. 1940); Guercia v. Guercia, *supra* note 1.

5. *Ibid.*

6. Guercia v. Guercia, *supra* note 1 (support of legitimate child); Doherty v. Doherty, 279 S.W.2d 690 (Tex. Civ. App. 1955) (custody decree).

7. *E.g.*, Upton v. State, 52 So. 2d 824 (Ala. 1951); Doughty v. Engler, 112 Kan. 583, 211 Pac. 619 (1923); Lane v. Phillips, 6 S.W. 610 (Tex. 1887).

8. *E.g.*, CAL. CIV. CODE § 196a; IOWA CODE ANN. § 675.1 (1950); N.D. CENT. CODE § 32-36-01 (1960).

9. Doughty v. Engler, *supra* note 7.

10. Craig v. Shea, 102 Neb. 575, 168 N.W. 135 (1918).

11. Hertz v. Industrial Comm'n., 37 Ohio L. Abs. 53, 72 N.E.2d 755 (1942); *contra*, Deo v. State, 272 P.2d 473 (Okla. Crim. 1954).

12. 9C U.L.A. 9 (Supp. 1964).

13. *E.g.*, Thompson v. Thompson, 93 So. 2d 90 (Fla. 1957); Ivey v. Ayers, 301 S.W.2d 790 (Mo. 1957); Levi v. Levi, 170 Ohio St. 533, 166 N.E.2d 744 (1960).

of support imposable on defendant under that state's law,[14] an amendment was recommended in 1958 which permitted the responding state to treat a duly registered judgment as if locally issued.[15] This amendment failed to accomplish its purpose, however, because it is apparent that the effectiveness of the Uniform Support Act is dependant upon the interpretation of the court in the responding state.[16] Even the criminal extradition provisions of the Act, unsatisfactory as they may be for providing support, are subject to judicial interpretation.[17]

If North Dakota's neighbors who do not impose the obligation to support illegitimate children[18] accept the reasoning of the Texas court, it is evident that a father of an illegitimate child, although obligated under North Dakota law to provide support,[19] need not be too inconvenienced to escape his obligation.

Considering that the common law rule has been abrogated in other states by judicial construction[20] and that full faith and credit has been extended to cover ambulatory judgments in other states[21] and even in Texas in some cases,[22] the Texas court would have made no radical variation from accepted practice. Leaving for legislative enactment what has been accomplished elsewhere by judicial construction is a dereliction of precedent. Judicial cognizance of the social problem and public burden for which a remedy is sought should be combined with the plenary powers of judicial interpretation and construction to give effect to this Uniform Support Act and preclude Texas and others[23] from becoming havens for those who wish to sow the seeds but avoid the tedium of nurturing the crop.

ROBERT STROUP

CRIMINAL LAW—NEW TRIAL—MISCONDUCT OF JURY—The defendant was convicted of petit larceny for obtaining money by an unpaid check. He appealed for a new trial claiming misconduct on the part of the jury. The affidavits of two jurors stated that during their deliberation the jury foreman made many statements to the jury in respect to his view that the defendant was guilty. He stated that he had a stack of bad checks in his office and that

14. Duncan v. Duncan, 85 Ohio L. Abs. 522, 172 N.E.2d 478 (1961); *contra*, Wilson v. Chumney, 214 Ga. 120, 103 S.E.2d 552 (1958) (responding state held proceedings of initiating state res judicata).
15. 9C U.L.A. §§ 33-38 (Supp. 1964).
16. Clarke v. Blackburn, 151 So. 2d 325 (Fla. 1963); Hardy v. Betz, 105 N.H. 169, 195 A.2d 582 (1963). The responding state refused extradition on grounds that defendant had not been adjudged guilty of a crime under law of responding state.
17. *Ibid.*
18. *E.g.*, Idaho, Michigan, Missouri and Montana.
19. N.D. CENT. CODE § 32-36-01 (1960).
20. *Supra* notes 9, 10 and 11.
21. *Supra* note 4.
22. *Supra* note 6.
23. *Op. cit. supra* note 18.